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## LABOUR & E.S.I. DEPARTMENT

### NOTIFICATION

The 26th June 2013

No. 5869—li/1 (J)-11/2009-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th May 2013 in Industrial Dispute Case No. 10 of 2009 of the Presiding Officer, Labour Court, Jeypore, Koraput to whom the industrial dispute between the Management of M/s. Balarpur Industries Ltd., Unit-Sewa, Gaganpur, Jeypore, Dist. Koraput and their Workmen represented by the General Secretary, BILT SEWA Paper Mills Employees Union, Gaganpur, Jeypore, Koraput was referred to for adjudication is hereby published as in the Schedule below :—

### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT  
INDUSTRIAL DISPUTE CASE NO. 10 OF 2009  
The 28th May 2013

#### *Present :*

Shri D. C. Mishra, O.S.J.S (Jr. Branch),  
Presiding Officer,  
Labour Court, Jeypore,  
Koraput.

#### *Between :*

The Management of  
M/s. Balarpur Industries Ltd.,  
Unit-Sewa, Gaganpur,  
Jeypore, At/P.O. Jeypore,  
Dist. Koraput.

. . First Party—Management

#### *Versus*

Their Workmen  
Represented by the  
General Secretary, BILT SEWA  
Paper Mills Employees Union,  
Gaganpur, Jeypore,  
At/P.O. Jeypore,  
Dist. Koraput.

. . Second Party—Workmen

## Under Sections 10 &amp; 12 of the Industrial Disputes Act, 1947

*Appearances :*

For the First Party—Management	. . Shri K. N. Samanta Rao, Advocate, Jeypore.
For the Second Party—Workmen	. . Shri B. V. Ramana, A/R of the Second Party Workmen.
Date of Argument	Dt. 2-5-2013
Date of Award	Dt. 28-5-2013

## A W A R D

The matter arises out of a reference made by the State Government in their Labour & Employment Department, Odisha, Bhubaneswar under Section 12 (5), read with Section 10 (1) of the I. D. Act, 1947 vide Memo. No. 8733 (4), dated the 19th Septemeber 2009 for adjudication of the following disputes.

## SCHEDULE

“Whether the demand of the General Secretary, BILT SEWA Paper Mills Employees Union, Gaganpur, Jeypore, District Koraput for regularisation of services of (1) Shri Krushna Chandra Panda, (2) Neelabati Parvati Harijan, (3) Ratan Bhotra and (4) Balunki Prasad Sahu by the management of M/s. Balarpur Industries Ltd., Unit Sewa, Gaganpur, Jeypore is legal and/or justified ? If not, to what relief the workers are entitled ?”

## 2. The workmen’s case runs thus :—

That the four (4) workmen namely, Krushna Chandra Panda, Parvati Harijan, Ratan Bhotra and Balunki Prasad Sahu were appointed as per verbal order of the C.G.M. of the management after due selection procedure and workmen Ratan Bhotra joined in work in the year 1999, whereas Krushna Chandra Panda and Parvati Harijan joined in the year 1993 and Balunki Prasad Sahu joined in the year 2003. It is avered that, at the time of their first appointment, the above said workmen were assured orally by the management about their regularisation of service and equal payment to them at par with similarly placed regular employees. It is alleged by the workmen that, after completion of one year of service, they several times approached to the management for regularisation of their service but in vain for which they reported the matter to their Union President. According to the workmen, the Union President moved the Labour Authority, i.e., the D.L.O., Jeypore for relief and the D.L.O., Jeypore started the conciliation but the management did not agree for which the D.L.O. submitted a failure report to the Government. The Government in Labour & Employment Department has referred this case under Sections 10 and 12 of the I. D. Act, 1947. Hence the trial.

3. The management has contested the case by filing W.S. denying all the allegations and claims made by the workmen. According to the management, the workmen are serving as contract labourer under Contractor, Kali Prasad Pattnaik and receiving salary from him for which there is no

employer and employee relationship between the management and the workmen. It is further pleaded that, since the workmen are contract labourers, this case is not maintainable and they have no cause of action to file the case. In the above premises the management has prayed for dismissal of the case.

4. As per the reference and in view of the rival pleadings of the parties, the following issues have been framed in this case for adjudication.

#### ISSUES

- (i) "Whether the demand of the General Secretary, BILT, Sewa Paper Mills Employees Union, Gaganpur, Jeypore, District Koraput for regularisation of services of (1) Shri Krushna Chandra Panda, (2) Neelabati Parvati Harijan, (3) Ratan Bhotra and (4) Balunki Prasad Sahu by the management of M/s. Balarpur Industries Ltd., Unit Sewa, Gaganpur, Jeypore is legal and/or justified ?
- (ii) If not, to what relief the workmen are entitled."

5. In order to substantiate the case, the workmen have examined five (5) witnesses in all. W.W. No.1, Krushna Chandra Panda, W.W. No.2 Balunki Prasad Sahu, W.W. No.3 Parvati Harijan and W.W. No. 4 Ratan Bhotra are the workmen of this case W.W. No.5 V. Rabikumar is an employee under the management.

Eight (8) numbers of documents have been proved from workmen side. The consolidated statement of classification of workmen under the management as on 28-1-1999 prepared by the management is marked Ext. 1. The letter dated the 14th August 2004 addressed to the D.G.M. of the management is marked Ext.2. The letters dated the 7th September 2004 of A.K. Pradhan addressed to ex-P.D.C., letter dated 16-12-2004 of Manager Engineering addressed to the D.G.M. (P.D.C.), letter dated the 9-3-2007 of the Assistant Manager addressed to the (C.G.M.), letter dated the 1-2-2010 of the Deputy Manager Production addressed to the Assistant Manager (P.D.C.), letter dated the 25-2-2010 of S. S. Dixit addressed to the A.M. (Admn.) and the letter dated the 9-4-2010 of C.R. Bahinipati addressed to the Union head have been marked as Exts. 3, 4, 5, 6, 7 & 8, respectively.

6. Shri Ranjan Kumar Jena, D.G.M. of the management has been examined as M.W.No. 1. Three (3) documents have been proved from management side. The licence No. 668, dated the 15-4-1999 in favour of Contractor Kali Prasad Pattnaik to supply labourers is marked Ext. A. The renewal of licence No. 2398, dated the 7-7-2012 issued in favour of Contractor Kali Prasad Pattnaik to supply labourers to the management is marked Ext. B. The Muster Rolls for the period from January, 2008 to December, 2009 except July 2009 (25 Sheets) is marked Ext. C.

7. *Issue No. (i)*—W.W. No.5, a co-worker under the management has deposed that the workmen of this case were appointed by the management and he learnt from the workmen that the management had assured them for regularisation of their services and equal pay. Admittedly, W.W. No.5 is serving under the Electrical Department of the management belonging to other department. Also he has not seen the appointment order of the workmen issued by the management. So much importance cannot be given to his evidence and his evidence is not helpful to the workmen.

W.W. Nos. 1,2,3, & 4, who are the workmen of this case have deposed that they were temporarily appointed by verbal order of the C. G. M. (management) for one year with assurance of regularisation of service and equal pay at par with their counterparts after completion of one year. They have further deposed that, after completion of one year from the date of their first appointments, they are approaching the management for equal pay and regularisation of service but in vain. Admittedly, the workmen were working in daily wages basis and they were not regular workers. The above witness Nos. 1 to 4 (the workmen of this case) have not filed any documentary evidence or appointment order or copy of wages register to justify that they were serving under the management and receiving salary from the management. Admittedly, the workmen were getting salary in daily wages basis and C.L., E.L. or any type of leave was not admissible to them. Also it is admitted that, W.W. Nos. 1,2,3 & 4 (the workmen of this case) were not getting salary for their absence period from duty and they were getting wages only for the days of their work. Thus the workmen could not prove by any cogent evidence that they were serving under the management for a long period in regular basis. Also the workmen could not prove that there was employer and employee relationship between them and the management for which their services should be regularised and equal pay with that of their counterparts should be allowed to them. The M.W. No.1 has deposed that the workmen were never appointed by the management and they are all along working through the contractor and getting wages through the contractor. The documents proved by the workmen as Exts.1 to 8 do not prove that they were serving under the management in regular basis for a long period. Exts. A & B proved by the management very clearly reveals that contractor Kali Prasad Pattnaik had valid licence to supply labourers to the management and Ext. C (M.R.) proves that the workmen were receiving wages from the contractor as contract labourers. The A/R of the workmen has filed some xerox copies in support of additional argument but those have not been proved in the Court by due procedure of law and those are xerox copies and having no seal on official letter numbers for which importance or reliance cannot be placed on those documents. The amount of salary of the above workmen as stated in their evidence does not tally with the salary which they have mentioned in their claim statement. In the above premises and without any written appointment order or written documents, absolute reliance cannot be placed upon the oral evidence of W.W. Nos. 1 to 4.

In the written argument, the A/R of the workmen has pleaded at Para. 7 that the management has not followed some mandatory provisions and rules of the I.D. Act for which the plea of the management that the workmen are serving as contract labourers under contractor Kali Prasad Pattnaik cannot be accepted and the inference should be drawn in favour of the workmen. But for those violations penal provisions can be attracted against the management and inference against the management cannot be drawn. Further, Exts. A & B reveal that the contractor Kali Prasad Pattnaik had valid licence to supply labourers to the management.

The management side has relied on the following two (2) decisions in their favour. In the decision reported in "1997, LLJ Vol. I, page 1204. State of U.P. and others & Ajaya Kumar" it has been held that —

"Daily wage basis service— No statutory rule to regularise the service —Even the method of appointment of the respondent on daily wage basis not proper inasmuch as no applications were called for.

There should exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post.

Daily wage appointment would obviously be in relation to contingent establishment and it continues so long as the work exists.”

In the decision reported in “1994-LLJ-Vol. III (Supp.) page 376, Jamshedpur Contractors Works Union And State of Bihar and others”. It has been held that —

I.D. Act, 1947 Section 10— Reference on permanency of contract labour engaged in TISCO—Tribunal rejecting reference as not maintainable—Supreme Court substitutes terms of reference without taking a technical view.”

In the aforesaid two (2) decisions the Hon'ble Supreme Court have held that the appointment of the workmen should be by due selection procedure and the post should be perennial in nature and permanency of contract labourers is not maintainable under Section 10 of the I.D. Act. In the present case the workmen could not prove that their posts were perennial in nature and that they were appointed under due process of law, i.e., by calling applications and conducting interview. Since the workmen are contract labourers, the reference for regularisation or permanency of service is not maintainable.

The workmen have relied on a number of decisions but the fact and circumstances of those cases are different then that of the present case. So those decisions are not applicable to the fact and circumstances of the present case and the workmen cannot get any benefit out of those decisions and the service of the workmen cannot be regularised and equal pay with that of their counterparts cannot be granted to them.

Accordingly this issue is answered in favour of the management and against the workmen.

*Issue No. (ii)*—In view of the discussion made in issue No.(i) above, the workmen are not entitled to get any relief in this case. Hence, order :

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ORDER—The reference is answered on contest against the workmen and in favour of the management but in the circumstances without costs. The demand of the General Secretary, BILT, SEWA Employees Union, Gaganpur, Jeypore for regularisation of service of the workmen is not legal or justified. The workmen are not entitled to get any relief in this case.

Dictated and corrected by me.

D. C. MISHRA  
28-5-2013  
Presiding Officer  
Labour Court, Jeypore

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28-5-2013  
Presiding Officer  
Labour Court, Jeypore

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By order of the Governor  
J. DALANAYAK  
Under-Secretary to Government